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Message Text

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ORIGIN NEA-10

INFO OCT-01 ISO-00 FEA-01 ACDA-07 CIAE-00 INR-07 IO-13
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E.O. 11652: GDS

TAGS:TECH,IN

SUBJECT: NRC ORDER ON TARAPUR INTERVENORS
1. NRC ISSUED AN ORDER JUNE 22 CONSOLIDATING PROCEEDINGS ON TWO INDIAN EXPORT APPLICATIONS (XSNM 845 AND XSNM 1060). THE ORDER, QUOTED IN FULL BELOW, HAS THE EFFECT OF MEETING THE CONCERNS OF THOSE INTERVENING IN THE XSNM 845 CASE THAT NRC MIGHT DISPOSE OF THE XSNM 1060 CASE WITHOUT ADDRESSING THE ISSUES RAISED BY THEM IN THE FORMER CASE. THE ORDER ALSO REAFFIRMS NRC'S POSITION THAT INDIVIDUAL EXPORT LICENSE APPLICATIONS MAY POSSIBLY BE SUBJECT TO CONSIDERATIONS WHICH WOULD WARRANT THE ISSUANCE OF LICENSES BEFORE THE FULL RESOLUTION OF THE ISSUES RAISED BY THE INTERVENORS IN THE JULY 1976 HEARINGS. ALTHOUGH EMBASSY AND CONSULATE GENERAL SHOULD BE AWARE OF THIS ORDER, WE DO NOT FEEL THERE
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IS ANY NEED AT THIS TIME TO TAKE THE INITIATIVE TO DISCUSS IT WITH INDIANS. OUR CONCERN IS THAT THE INDIANS MIGHT MISUNDERSTAND THE NRC'S ACTION.

2. MEMORANDUM AND ORDER: "ON FEBRUARY 10, 1977, THE NATURAL RESOURCES DEFENSE COUNCIL, INC., THE SIERRA CLUB, AND THE UNION OF CONCERNED SCIENTISTS JOINTLY FILED TWO

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MOTIONS REQUESTING THAT EXPORT APPLICATION XSNM-1060 BE CONSOLIDATED WITH CONSIDERATION OF EXPORT APPLICATION

XSNM-845. IN SUPPORT OF THEIR MOTIONS, PETITIONERS CITED SECTION 2.716 OF THE COMMISSION'S REGULATIONS, WHICH PROVIDES THAT "ON MOTION AND FOR GOOD CAUSE SHOWN OR ON ITS OWN INITIATIVE, THE COMMISSION MAY CONSOLIDATE FOR HEARING OR FOR OTHER PURPOSES TWO OR MORE PROCEEDINGS IF IT FINDS THAT SUCH ACTION WILL BE CONDUCIVE TO THE PROPER DISPATCH OF ITS BUSINESS AND TO THE ENDS OF JUSTICE." PETITIONERS ARGUE THAT CONSOLIDATION IS APPROPRIATE HERE BECAUSE THE ISSUES RAISED IN THE TWO PROCEEDINGS ARE IDENTICAL AND THAT IT WOULD BE UNJUST FOR THE COMMISSION TO RULE ON THE RECENTLY FILED XSNM-1060 BEFORE ACTING UPON XSNM-845.

3. THE OFFICE OF THE EXECUTIVE LEGAL DIRECTOR (OELD) RECOMMENDS THAT PETITIONERS' MOTION BE DENIED BECAUSE SECTION 2.716 PERTAINS TO THE CONDUCT OF ADJUDICATORY HEARINGS AND CONTEMPLATES FILING OF MOTIONS FOR CONSOLI-DATION BY PARTIES TO THE PROCEEDING.(OELD ANSWER TO MOTIONS FOR CONSOLIDATION OF PROCEEDINGS, P.2) OELD NOTED THAT, ALTHOUGH PETITIONERS PARTICIPATED IN THE LEGISLATIVE-TYPE HEARINGS THE COMMISSION HELD ON XSNM-845 IN JULY 1976, THEY ARE NOT PARTIES TO THAT PROCEEDING BECAUSE THE COMMISSION DENIED THEM LEAVE TO INTERVENE FOR LACK OF STANDING. SEE IN THE MATTER OF EDLOW INTERNATIO-

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NAL, CLI-76-6, NRCI-76/5 (1976). OELD ALSO POINTED OUT THAT PETITIONERS HAVE NOT SOUGHT TO BECOME PARTIES TO XSNM-1060 BY FILING A PETITION SEEKING LEAVE TO INTERVENE IN THAT PROCEEDING. (FOOTNOTE: IN VIEW OF OUR DENIAL OF STANDING IN A SUBSTANTIALLY IDENTICAL MATTER, PETITIONERS COULD REASONABLY HAVE REGARDED SUCH A FILING AS AN EMPTY GESTURE.) THEREFORE, OELD CONCLUDED THAT BECAUSE PETI-TIONERS ARE NOT PARTIES TO EITHER PROCEEDING, THEY COULD NOT MOVE TO CONSOLIDATE THEM. HOWEVER, OELD SUGGESTED THAT "WITHOUT FORMALLY CONSOLIDATING THE TWO PROCEEDINGS, THE COMMISSION CAN TAKE INTO ACCOUNT ... THE COMMONALITY OF THE ISSUES IN ACTING ON THE APPLICATIONS."

4. PETITIONERS HERE ARE NOT "PARTIES" TO THE PROCEEDINGS ON EITHER XSNM-845 OR XSNM-1060. THEY THEREFORE HAVE NO RIGHT TO A FORMAL CONSOLIDATION BECAUSE CONSOLIDATION IS AN ACTION SOLELY WITHIN THE COMMISSION'S DISCRETIONARY AUTHORITY, FOR ITS CONVENIENCE IN CONDUCTING ITS PROCEED-INGS AND DELIBERATIONS IN THE MOST EFFICIENT MANNER. WE NOTE FURTHER, HOWEVER, THAT THE COMMISSION MAY TAKE THE COMMONALITY OF THE PROCEEDINGS INTO ACCOUNT--OR CONSOLI-DATE THE PROCEEDINGS--ON ITS OWN INITIATIVE. SECTION 2.716, WHILE IT APPLIES ONLY TO THE CONDUCT OF ADJUDICA-

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TORY HEARINGS AND THEREFORE NOT TO THE TARAPUR LICENSING ACTIONS, NEVERTHELESS MAY PROVIDE GUIDANCE FOR DECIDING WHETHER OF NOT TO TAKE SUCH ACTION. IT MIRRORS RULE 42(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE WHICH ESTABLISHES

GENERAL STANDARDS USED BY FEDERAL COURTS IN DETERMINING WHETHER CONSOLIDATION OF PROCEEDINGS IS APPROPRIATE. RULE 42(A) PROVIDES THAT, IF ACTIONS INVOLVE COMMON QUESTIONS OF LAW OR FACT, THEY MAY BE CONSOLIDATED IF CONSOLIDATION WOULD "AVOID UNNECESSARY COSTS OR DELAY." A SIMILAR PROVISION PERMITTING WILL BE
INCLUDED IN EXPORT LICENSING REGULATIONS SHORTLY TO BE ISSUED BY THE COMMISSION FOR PUBLIC COMMENT. (THIS RULE WOULD BE CODIFIED AT 10 CFR 110.110(E)).
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5. HERE, THE ISSUES RAISED IN BOTH EXPORT LICENSING APPLICATIONS APPEAR TO BE IDENTICAL. BOTH PROCEEDINGS INVOLVE REQUESTS TO EXPORT LOW-ENRICHED URANIUM TO INDIA FOR USE AT THE TARAPUR ATOMIC POWER STATION. THE SAME AGREEMENT FOR COOPERATION WOULD GOVERN THE USE OF ALL MATERIAL SOUGHT AND IN EACH CASE THE COMMISSION CANNOT ISSUE THE REQUESTED LICENSE UNLESS IT DETERMINES THAT SUCH ISSUANCE WOULD NOT BE "INIMICAL TO THE COMMON DEFENSE AND SECURITY" OF THE UNITED STATES. 42 U.S.C. 2077. MOREOVER, THE COMMISSION HAS ALREADY HELD PUBLIC HEARINGS ON JULY 20 AND 21, 1976, AT WHICH TIME ALL PERTINENT ISSUES CONCERNING FUEL SHIPMENTS TO INDIA FOR USE AT THE TARAPUR FACILITY WERE THOROUGHLY VENTILATED. FURTHER SUBMISSIONS BY THE PETITIONERS ON XSNM-1060 WOULD APPEAR TO BE AN UNNECESSARY DUPLICATION OF THAT EFFORT.
6. PERHAPS MOST IMPORTANT, PROCEDURAL ISSUES REGARDING PETITIONERS' PARTICIPATION IN EXPORT LICENSE PROCEEDINGS ARE SUB JUDICE IN NRDC V. NRC, NO. 76-1525 (D.C. CIR., FILED JUNE 11, 1976). CONSOLIDATION OF THESE ACTIONS WILL PERMIT AVOIDANCE OF ANY SUGGESTION THAT THE COMMISSION HAS MOOTED, OR IS SEEKING TO MOOT, THESE PROCEEDINGS BECAUSE THE CIRCUMSTANCES WARRANT OUR AUTHORIZING A FURTHER FUEL SHIPMENT (XSNM-845) SIMILAR TO THAT WHICH WAS AUTHORIZED LAST JULY IN XSNM-805. THE COMMISSION HAS INDICATED FROM THE OUTSET THAT IT REGARDED INDIVIDUAL EXPORT LICENSE APPLICATIONS AS POSSIBLY SUBJECT TO CONSIDERATIONS WHICH WOULD WARRANT ISSUANCE OF LICENSES IN ADVANCE OF ITS FULL RESOLUTION OF ALL THE GENERIC ISSUES DEALT WITH IN THE JULY 1976 HEARINGS. THE SUGGESTED MEASURE WILL PRESERVE FOR ALL PARTIES CONCERNED THE IMPORTANT PROCEDURAL ISSUES NOW PENDING BEFORE THE COURT.
7. THIS ACTION DOES NOT ALTER THE RIGHTS OF PETITIONERS NOR DOES IT MAKE PETITIONERS PARTY TO EITHER PROCEEDING.
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JOHNSON V. MANHATTAN RAILWAY COMPANY, 289 U.S. 479; WRIGHT AND MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL, SECTION 2382. " VANCE

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Message Attributes

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Disposition Date: 22 May 2009
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